

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

MARCIE BIGGS,

Plaintiff,

v.

CIVIL ACTION NO. 3:17-cv-02425

CHASE BANK USA, N.A.,

Defendant.

NOTICE OF REMOVAL

Defendant Chase Bank USA, N.A. (“Chase”), by counsel, submits the following Notice of Removal based on federal question jurisdiction. In support of this removal, Chase states as follows:

Procedural Background

1. On or about July 21, 2016, plaintiff Marcie Biggs (“Plaintiff”) commenced this case by filing a Complaint in the Circuit Court of Putnam County, West Virginia, styled *Marcie Biggs v. JPMorgan Chase & Co. aka JPMorgan Chase Bank, NA aka JPMorgan, aka Chase bank USA, NA, aka Chase*, Case No. 16-C-183 (“Civil Action”).¹ The Complaint alleged violations of sections 2-125, 2-125(d), 2-127(a) and (c), and 2-128 of the West Virginia Consumer Credit and Protection Act; violations of the West Virginia Computer Crime and Abuse Act; violation of the Telephone Harassment Statute; negligence; invasion of privacy; and intentional infliction of emotional distress. The Complaint included a stipulation limiting damages to no more than \$75,000.00.

¹ On October 4, 2016, the circuit court entered an “Agreed order Granting the Joint Motion to Correct Misjoinder and Change Case Caption.” Chase is the defendant in this matter.

2. Plaintiff's original Complaint was not removable, neither on the basis of diversity nor on the basis of federal question jurisdiction.

3. However, "if the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable." 28 U.S.C. § 1446(b)(3).

4. On March 30, 2017, the circuit court entered an "Order Granting Plaintiff's Motion to Amend Complaint."

5. On or about April 3, 2017, Plaintiff filed a "First Amended Complaint and Demand for Jury Trial" ("Amended Complaint"), which includes, among other claims, a new claim for violation of the Telephone Consumer Protection Act, 47 U.S.C § 227 (the "TCPA"). (Ex. A at ¶¶ 22-27.)

6. Removal is timely pursuant to 28 U.S.C. § 1446(b), as this Notice of Removal is filed within thirty (30) days of Chase's receipt of the Amended Complaint.

Basis for Removal: Federal Question Jurisdiction

7. Federal question jurisdiction exists when the action asserts a claim "arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331.

8. Plaintiff's Amended Complaint includes a claim for violations of the TCPA – a federal statute.

9. The TCPA provides federal question jurisdiction. *Mims v. Arrow Fin. Svcs., LLC*, 132 S. Ct. 740, 181 L.Ed.2d 881 (2012); *Bailey v. SLM Corp.*, 2012 WL 1598059 (S.D.W. Va. May 7, 2012).

10. Plaintiff is asserting a claim that arises under federal law. Hence, this action is a civil action over which this Court has original jurisdiction under 28 U.S.C. § 1331, and, therefore, may be removed to this Court pursuant to the provisions of 28 U.S.C. § 1441(a) and 28 U.S.C. § 1446.

11. Plaintiff's state law claims are so related to Plaintiff's claim for violation of the TCPA that the state law claims form part of the same case or controversy. 28 U.S.C. 1367(a). Accordingly, the Court may exercise supplemental jurisdiction over Plaintiff's state law claims.

Venue and Procedural Requirements

12. This Court is the District Court embracing Putnam County, where the Civil Action is currently pending. Therefore, it is the proper venue for this action. L.R. Civ. P. 77.2.

13. Pursuant to 28 U.S.C. § 1446(a), copies of the state court docket sheet and all process, pleadings, and orders served in the state court action as of the date of this removal are attached hereto. (Ex. B.)

14. Pursuant to 28 U.S.C. § 1446(d), Chase is filing this Notice of Removal in the state court action and serving it on Plaintiff. (Ex. C.)

WHEREFORE, defendant Chase Bank USA, N.A. files this Notice of Removal to remove Civil Action No. 16-C-183, now pending in the Circuit Court of Putnam County, West Virginia, to this Court for all further proceedings.

CHASE BANK USA, N.A.

By Spilman Thomas & Battle, PLLC

/s/ Angela L. Beblo

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CERTIFICATE OF SERVICE

I, Angela L. Beblo, counsel for defendant Chase Bank USA, N.A., hereby certify that on April 20, 2016, I electronically filed the foregoing **Notice of Removal** with the Clerk of the Court using the CM/ECF system, and that a copy of the same has been served upon counsel of record via regular U.S. Mail, addressed to the following:

Daniel Armstrong, Esquire
Benjamin Sheridan, Esquire
Klein & Sheridan, LC
3566 Teays Valley Road
Hurricane, WV 25526
Counsel for Plaintiff

/s/ Angela L. Beblo

Angela L. Beblo (WV Bar No. 10345)